

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2021-59-W - ORDER NO. 2021-511

JULY 26, 2021

IN RE: Petition of the Office of Regulatory) ORDER REQUIRING UPDATED
Staff for an Order Requiring the Posting) BOND FROM GEORGIA
of an Updated Performance Bond -) WATER AND WELL SERVICE,
Georgia Water and Well Service,) INCORPORATED
Incorporated)

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition from the Office of Regulatory Staff ("ORS") to determine an increase or update in the performance bond for Georgia Water and Well Service, Inc. ("GWWS" or the "Company") based upon the Company's 2019 Water Utility Report and to require the execution and filing of an updated performance bond by the Company pursuant to Commission Regulation 103-712.3.1. For the reasons explained herein, the Commission concluded that the Petition should be granted.

I. INTRODUCTION

On February 18, 2021, the ORS filed a Petition with the Commission seeking an order requiring the posting of an updated performance bond from the current amount of \$100,000.00 to \$215,000.00. The Clerk for the Public Service Commission of South Carolina (Clerk) served a copy of ORS' Petition upon the Company on February 24, 2021. Pursuant to S.C. Code Ann. Regs. 103-826 and 103-830, the Clerk noticed the Company that it must answer the allegations contained in the Petition within thirty (30) days of receipt. Within less than thirty (30) days, GWWS executed an updated performance bond

on March 1, 2021, in the amount of \$215,000.00 as requested by ORS. ORS advised the Commission by letter that the Company had forwarded a copy of the Performance Bond in the amount of \$215,000.00, and also filed a copy of the updated performance bond.

II. DISCUSSION AND ANALYSIS

A. Applicable Law

As set forth in S.C. Code Ann. § 58-5-10, et seq. (2015), the Commission is responsible for the regulation of water and wastewater utilities operating for compensation, and pursuant to S.C. Code Ann. § 58-4-10, et seq., ORS is charged with the duty to protect the public interest.

The Commission has jurisdiction over GWWS. GWWS was granted authority for GWWS to operate as an authorized water system in South Carolina by Commission Order 1993-335 in Docket No. 1993-055-W. As part of its jurisdiction over GWWS, the Company as ordered by the Commission pursuant to S.C. Code Ann. § 58-5-10 et seq., must have on file with the Commission a performance bond with sufficient surety, made payable to the Commission. Section 58-5-720 provides that:

The commission shall, before the granting of authority or consent to any water or sewer utility regulated by the commission, for the construction, operation, maintenance, acquisition, expansion, or improvement of any facility or system, prescribe as a condition to the consent or approval that the utility shall:

(1) file with the commission a bond with sufficient surety, as approved by the commission, in an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars payable to the commission and conditioned upon the provision by the utility of adequate and sufficient service within its service area and provide a

copy of the bond to the Office of Regulatory Staff; or

(2) deliver to the commission certificates of deposit, with endorsements as required by the commission, of federal or state chartered banks or savings and loan associations who maintain an office in this State and whose accounts are insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The certificates of deposit shall not exceed the amount covered by insurance. The commission has the right, upon notice and hearing, to declare all or any part of the bond or certificate of deposit forfeited upon a determination by the commission that the utility failed to provide service without just cause or excuse and that this failure has continued for an unreasonable length of time. A further condition of the bond or certificate of deposit shall be the provision for payment to the commission of any fine or penalty imposed or assessed by the commission against the utility under the provisions of Section 58-5-710.

S. C. Code Ann. Section 58-5-710 (2015). Additionally, pursuant to S.C. Code Ann. Regs. 103.512.3 (2012), all water utilities under the jurisdiction of the Commission must have and maintain a current performance bond on file with the Commission prior to operating, maintaining, acquiring, expanding, or improving any water utility system. “[T]he utility shall have on file with the commission and provide a copy to the ORS a performance bond with sufficient surety using a format prescribed by the commission.” S.C. Code Ann. Regs. 103-712.3 (2012); *see also*, S.C. Code Ann. Regs. 103-712.3.1 (2012).

The Commission's regulations provide the process for calculation by ORS of the proper amount of a performance bond for any water utilities. South Carolina Code of Regulations 103-712.3.1 provides that:

The amount of bond shall be based on, but not limited to, the total amount of the following categories of expenses for twelve months: Operation and Maintenance Expenses,

General and Administrative Expenses, Taxes Other Than Income Taxes, Income Taxes, and Debt Service including Interest Expenses. The minimum amount of the bond shall be \$100,000 and the maximum amount of the bond shall be \$350,000 based on the verified expenses of the utility for the preceding twelve-month period. A bond shall be required for each water and wastewater provider under the jurisdiction of the Public Service Commission. A certification that the face amount of the bond on file with the commission complies with the provisions of 103-712.3.1 shall be filed with the annual report required by 103-712.1 of this rule. The ORS shall review the annual reports and certifications and determine whether the present bond of the utility accurately reflects the expenses of the utility. Based upon the expenses of the utility as submitted in the annual report and as reviewed and adjusted by the ORS, the ORS shall make recommendations for increasing or reducing the amount of the bond within the minimum and maximum limits as prescribed by statute.

S.C. Code Ann. Regs. 103-712.3.1 (2012). Regulation 103-712.3.1 further directs that ORS shall review the reports, calculate, and determine annually whether the amount of the performance bond on file with the Commission correctly reflects the utilities' expenses as follows:

. . . . The ORS shall review the annual reports and certifications and determine whether the present bond of the utility accurately reflects the expenses of the utility. Based upon the expenses of the utility as submitted in the annual report and as reviewed and adjusted by the ORS, the ORS shall make recommendations for increasing or reducing the amount of the bond within the minimum and maximum limits as prescribed by statute.

S.C. Code Ann. Regs. 103-712.3.1 (2012).

B. Evidentiary Record

GWWS filed its annual Water Utility Report as required by Regulation 103-712.3.1 with the Commission and provided a copy to ORS. S.C. Code Ann. Regs. 103-712.3.1 (2012). ORS states that it performed the required review of this Report to determine whether the present bond of GWWS accurately reflects the expenses of the utility. *See*, ORS Petition, ¶ 5, p. 2. The calculation made by ORS demonstrates that the performance bond for GWWS should be at a minimum no less than \$212,256.00. ORS' calculation is set forth in Exhibit B of the Petition as follows:

Georgia Water and Well Services, Inc. - Water Performance Bond and Surety Calculations		
	2019 Year-End Balance per Water Annual Report Filing	Minimum Performance Bond Requirement
Operation and Maintenance Expenses	199,729 ¹	
General and Administrative Expenses	-	
Taxes Other Than Income Taxes	12,527 ²	
Income Taxes	- ³	
Debt Service including Interest Expenses	- ⁴	
Total	<u><u>212,256</u></u>	<u><u>212,256</u></u>
Note 1: Schedule 300, Account 401		
Note 2: Scheudle 300, Accounts 408.11-13		
Note 3: Scheudle 300, Accounts 409.10-11, 410.10-11		
Note 4: Schedule 300, Accounts 427.1-5		

ORS Petition, Exhibit B.

ORS Witness Kyle D. Maurer, Sr., who is the Deputy Director of the Water Operations for the Office of Regulatory Staff, stated under oath that he advised GWWS in writing of the findings from ORS' review and that ORS recommended an increase in the

performance bond maintained by GWWS with the Commission. *See*, ORS Petition, Exhibit C (Affidavit of Witness Maurer). Mr. Maurer further testifies that he recommends an increase in the amount of the performance bond for GWWS based upon his review of the Company's 2019 Report, and that he contacted GWWS president, David Shoemaker, about this change and these results for an updated performance bond in the amount of \$215,000.00. *Id.* Witness Maurer further testified that prior to the filings of the Petition by ORS, he was unable to speak with the president of GWWS even after attempts by letter, telephone, and email. *Id.*

On March 10, 2021, ORS notified the Commission that the water utility, GWWS, forwarded performance bond documents in response to the Petition of ORS requesting that the Commission order GWWS to update its performance bond. ORS states that GWWS provided a performance bond in the amount of \$215,000.00. ORS further requested that if the Commission approves the new bond amount of \$215,000.00 sufficient, then ORS withdraws the request to require an updated bond from GWWS.

Although served with the Petition and Notice by the Clerk of the Commission, GWWS did not make any appearance, response, or filing related to this matter.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a thorough consideration of the Petition, the evidence and applicable law, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Since April 9, 1993, GWWS has been a water utility licensed and authorized by Commission Order 1993-335 in Docket No. 1993-055-W to operate in the State of South Carolina in Anderson and Oconee Counties, South Carolina.

2. The Commission has jurisdiction over GWWS pursuant to S.C. Code Ann. § 58-5-10, *et. seq.*

3. GWWS is required to maintain a performance bond on file with the Commission having sufficient surety, and which is made payable to the Commission.

4. Prior to this Petition, GWWS maintained a performance bond dated October 22, 2010, with the Commission in the amount of \$100,000.00 payable to the Commission in accordance with S.C. Code Ann. § 58-5-720 (2015). *See*, ORS' Petition Exhibit A.

4. GWWS filed its 2019 Water Utility Annual Report. *See*, ORS' Petition Exhibit B.

5. ORS did review the Company's annual report and recommended an increase in the amount of the performance bond for GWWS so that this bond maintained on file with the Commission is in the amount of \$215,000.00.

6. Prior to the filing of the Petition, ORS did not receive any response from GWWS or any updated performance bond on behalf of GWWS for ORS to forward to the Commission.

7. On March 1, 2021, GWWS executed an updated performance bond in the amount of \$215,000.00 and provided the same to ORS following the filing of its Petition with the Commission.

8. The calculation of performance bond amount performed by ORS complies with the process required by Regulation 103-712.3.1 to use the verified expenses of the utility for the preceding twelve-month period.

9. GWWS did not object to a proposed updated performance bond in the amount of \$215,000.00 recommended by ORS in its Petition.

CONCLUSIONS OF LAW

1. The performance bond recommendation by ORS for increasing the amount of the bond is within the minimum and maximum limits as prescribed by Section 58-5-720 of the South Carolina Code of Laws.

2. The Commission finds and determines that the amount of the performance bond for GWWS is \$215,000.00, and that such dollar amount is in accordance with South Carolina Code Section 58-5-720 and Regulation 103-712.3.1.

3. Based on the documentation submitted by ORS and uncontested by GWWS, GWWS is required to update its performance bond on file with the Commission having sufficient surety in the amount of \$215,000.00, and which is made payable to the Commission.

IV. ORDERING PROVISIONS

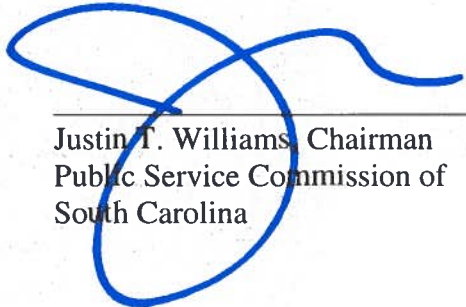
IT IS THEREFORE ORDERED THAT:

1. Georgia Water and Well Service, Inc. shall execute and maintain an updated performance bond with the Commission in the amount of \$215,000.00 payable to the Commission in accordance with S.C. Code Ann. § 58-5-720 (2015).

2. Within no later than fifteen (15) days of receipt of this Order, Georgia Water and Well Service, Inc. shall deliver to the Commission, as required by S.C. Code Ann. Regs. 103-712.3, the original performance bond in the amount of \$215,000.00 and forward a copy to the Office of Regulatory Staff if the Company did not already execute and submit the original updated bond dated March 1, 2021, to the Commission.

3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission of
South Carolina